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the United States

TWELVE TOWNS

IN OPPOSI-
APPLICATION
OF CERTIORARI

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SUBJECT INDEX

	Page
Jurisdiction	1
Questions Presented for Review	2
Statement of the Case	3-5
Raising of Federal Questions Sought to Be Reviewed	5-7
Argument	7-12
I. Alleged Federal Constitutional Question Not Timely Raised	8-9
II. Res Judicata is Not a Federal Question	10-11
III. The Due Process Clause is Not Violated by An Erroneous State Court Decision on a State Matter	12
Appendix 1—Return to Writ of Certiorari, Answer to Petition Therefor, and Motion to Quash	13-26
Appendix 2—Petition for Leave to Intervene as Party Defendant	27-28

INDEX TO AUTHORITIES CITED

American Railway Express v. Kentucky, 273 U. S. 269, 273	12
American Surety Company v. Baldwin, 287 U. S. 156, 163-4	8
Arrowsmith v. Harmoning, 118 U. S. 194, 195-6	12
Black v. Cutter Laboratories, 351 U. S. 292, 297	6
Covington v. First National Bank, 198 U. S. 100, 109	10
Hubert v. Chicago, 202 U. S. 275	9
Iowa Central Railway Company v. State of Iowa, 160 U. S. 389, 393-4	12

Page

Kersh Lake Drainage District v. Johnson, 309 U. S. 485, 489 11
Madison Heights v. Drainage Board, 361 Mich. 522, 524-5, 526 ..... 2, 4, 10
McDonald v. Oregon R. R. & Navigation Co., 233 U. S. 665, 669-70 12
Oklahoma Packing Company v. Oklahoma G & E Company, 309 U. S. 4, 8 11
Radio Station WOW v. Johnson, 326 U. S. 120, 128 .. 9
Standard Oil Co. v. Missouri, 224 U. S. 270, 290 12
Township of Southfield and City of Troy v. Drainage Board, 357 Mich. 59 4
Union & Planters' Bank v. Memphis, 189 U. S. 71, 75 10
Wright v. Georgia RR & Banking Company, 216 U. S. 420, 429 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 855

CITY OF MADISON HEIGHTS,
a Michigan Municipal Corporation,
Petitioner,

vs.

DRAINAGE BOARD FOR THE TWELVE TOWNS RELIEF DRAINS, DANIEL W. BARRY, Its Chairman, DELOS HAMLIN and ROBERT Y. MOORE,
Respondents

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI

JURISDICTION

28 U.S.C.A. Sec. 1257 (3) does not confer jurisdiction upon this court in this case. This question will be discussed under the heading "Argument."

QUESTIONS PRESENTED FOR REVIEW

On page 3 of the printed petition are set forth three questions, each of which is based upon a fals premise.

Question No. 1 is based upon the false premise that there was no prior adjudication of the legality of the apportionment of cost. The Michigan Supreme Court held otherwise. See *Madison Heights v. Drainage Board*, 361 Mich. 522, 526, where the court said:

> "Plaintiff further denies defendants' claim of *res judicata* on the ground that this court did not approve the formula here involved in our opinion and decision in *Southfield-Troy*. It was so approved by the trial court. Appeal might have been taken from the holding but was not. It was not reversed by this court and, therefore, remains determinative of the issue."

Question No. 2 is based upon the false premise that the state court in relying exclusively upon the theory of *res judicata*, permits the imposition of a special assessment tax upon taxpayers without regard to the benefits to be received and also upon the false premise that there has been no court ruling upon the question of the computation of the tax as it relates to benefits and contributions. See "Argument".

Question No. 3 is based upon the false premise that the state statute as interpreted by the state court vests in the drainage board the right to impose special assessment taxes without consideration of benefits received or the origin of the condition sought to be corrected.

Petitioner's statement of the questions presented for review do not contain a single Federal question.

STATEMENT OF THE CASE

In order to understand the legal questions involved it is necessary to make a brief resumé of the facts, supplementing the statement set forth by the petitioner.

The proceedings in the "Twelve Towns Relief Drains" project were begun by the filing of a petition therefor on October 26, 1955, executed by nine of the twelve municipalities then involved, including the Township of Royal Oak from which the City of Madison Heights was later carved by incorporation. The authority for these proceedings is Chapter 20 of Act No. 40, Public Acts of 1956 (M.S.A. Supp. 11.1001 *et seq.*), which is a re-enactment without material change, of Chapter 18-A of Act No. 316, Public Acts of 1923. The act authorizes the apportionment of the cost of these relief drains to the several public corporations at large.

The proceedings advanced to the point of a hearing on the apportionment of cost (~~$38,581.00~~ $38,581,0). Just prior to the hearing, two chancery suits were begun in the Oakland County Circuit Court in Chancery by the Township (now City) of Southfield and by the City of Troy against the drainage board for the project, restraining the holding of the hearing on apportionments. These cases were tried together in December, 1957. The decision of the Circuit Court was in favor of the drainage board and a decree was entered in each case on August 18, 1958. The pertinent provisions of the Circuit Court opinion are found in petitioner's Appendix G. Among other things the court said:

> "The court concludes that the method or formula used by the board in determining its tentative allocation of cost (Exhibit 7) is both equitable and legal."

The decrees in the lower court each contained the following statement:

> "That the tentative apportionment of cost of the Twelve Towns Relief Drains among the several public corporations, as set forth in the resolution of the Drainage Board adopted on September 25, 1957, was not an abuse of the discretion lodged in the Drainage Board and that there was nothing illegal in the method used in arriving at such apportionments." (Petitioner's Appendix H.)

The Cities of Southfield and Troy appealed from parts of said decrees but not from the above mentioned portion thereof sustaining the apportionments. The State Supreme Court decided in favor of the drainage board except as to one point not material here. See *Township of Southfield and City of Troy v. Drainage Board*, 357 Mich. 59. (Petitioner's Appendix F)

After the decision in the Supreme Court in the *Southfield* and *Troy* cases the drainage board secured a new estimate of cost which was $47,102,000 owing to increases in construction costs during the delay. The new apportionment was based upon the formula which is found on page 43 of the pending petition in this court. This formula is the same as the formula contained in Exhibit 7 in the *Southfield* and *Troy* cases. The change in the percentage apportionments are the result of the application of the formula to the increased cost and to certain area changes which had occurred in the interim in the municipal and highway areas affected. Madison Heights' percentage was decreased. *Madison Heights v. Drainage Board*, 361 Mich. 522, 524-5. A hearing on the new apportionment of cost was held on September 30, 1959 at which the tentative apportionments set forth on pages 40 and 41 of the pend-

ing petition were confirmed. Thereafter the City of Madison Heights filed its petition in the Oakland Circuit Court for a writ of certiorari. (Petitioner's Appendix E)

The drainage board answered the petition and included in its answer a motion to quash the writ upon the grounds (1) that the proceedings of the drainage board showed that it had acted legally in all matters and (2) that the cause of action was barred by the prior decrees in the *Southfield* and *Troy* cases. The answer of the drainage board including motion to quash is appended hereto as Appendix 1.

The decision of the lower court was in favor of the City of Madison Heights and the drainage board appealed. The State Supreme Court reversed the judgment of the lower court. It based its decision upon the defense of *res judicata*. Both in the Circuit and Supreme Court the City of Madison Heights claimed that it did not actually intervene in the *Southfield* and *Troy* cases. The State Supreme Court held against the city in this respect. 361 Mich. 525, 526. Attached hereto as Appendix 2, is a copy of Madison Heights' petition for intervention in those cases.

RAISING OF FEDERAL QUESTIONS SOUGHT TO BE REVIEWED

1. Nowhere in the pleadings or briefs in either the Circuit Court or State Supreme Court, prior to the brief for rehearing in the Supreme Court, is there any mention or reference to the due process clause of the Federal Constitution. Petitioner claims that a Federal question was raised when the State Supreme Court in its decision incidentally used the term "due process" in the following sentence:

> "There is nothing in the statute, nor in common sense or a regard for fairness or due process, calling for two such opportunities concerning the same question, that being, here, the validity of the apportionment formula." 361 Mich. 527.

In *Black v. Cutter Laboratories*, 351 U. S. 292, 297, the court said:

> "This court, however, reviews judgments, not statements in opinions."

2. Petitioner's bare statement 2 that the decision of the State Supreme Court deprives it of its property without due process of law, points out no Federal jurisdiction. It is the wail of every defeated litigant.

3. The statute mentioned in petitioner's paragraph 3 was construed by the State Supreme Court as a limitation and not as a grant. 361 Mich. 527. This court is bound by that decision.

4. The petitioner refers to its application for rehearing in the Supreme Court as its basis here for a claim that a Federal question is involved. Due process is not mentioned in the rehearing application. It is mentioned in paragraph numbered 2 of its brief for rehearing but no authority is cited in support thereof except the general statement that due process involves fair play. The raising of the question of due process in the state court on a motion for rehearing is not sufficient. See "Argument."

5. Petitioner now contends that the general statement in its petition for writ of certiorari in the county court, in respect to the relationship of assessments and benefits, raised a Federal constitutional question in the state courts. If that were true, why is it that the briefs in behalf of the City of Madison Heights in the Michigan Supreme Court

did not mention the constitutional question? The city makes no claim that it argued any Federal constitutional question prior to the filing of its brief for rehearing in the State Supreme Court.

ARGUMENT

Petitioner on pages 12 and 13 of its Application under the heading "Argument" alleges that it has been deprived of its constitutional rights in three respects designated as a, b and c.

(a) The state court interpreted M.S.A. Supp. Section 11.1483 as a limitation and not a grant. That interpretation of the statute by the state court is binding upon this court. In any event after the hearing on apportionments there was no new question to be litigated. As stated by the state court on page 525, "Its objection (at the hearing) was directly only to the formula used as a basis for apportionment." The formula had already been litigated. No unlitigated question was therefore raised and subject to review by the court.

(b) Petitioner says that *res judicata* is not applicable because there was no prior determination by any court that the drainage board did in fact follow the statute. The record shows otherwise. The opinion of the trial court in the *Southfield* case says:

> "The court concludes that the method or formula used by the board in determining its tentative allocation of cost (Exhibit 7) is both equitable and legal." (Petitioner's Appendix G, p. 68.)

In paragraph 14 of the decree in the *Southfield* case (Petitioner's Appendix H, p. 69) the trial court decreed "that

there was nothing illegal in the method used in arriving at such apportionments." In paragraph 18 of the same decree (Appendix 1, p. 23) the trial court decreed "that the various proceedings which have been taken in respect to the construction and financing of the Twelve Towns Relief Drains have been in compliance with Chapter 20 of the Drain Code of 1956 and are legal." The same provisions were in paragraphs 13 and 17 of the decrees in the *Troy* case.

(c) Whether petitioner was a party in the *Southfield* and *Troy* cases has been decided by the state court and is binding upon this court. 361 Mich. 526.

It is significant that petitioner cites no court decisions to support its arguments.

I.

Alleged Federal Constitutional Question Not Timely Raised

No claim is made by the petitioner that the due process clause of the Federal Constitution was discussed in its briefs prior to the time of filing a petition for rehearing. The rule is laid down by this court in *American Surety Company v. Baldwin*, 287 U. S. 156, 163-4, as follows:

> "The Surety Company petitioned for a rehearing. In that petition, besides reiterating several of its previous contentions, it urged, for the first time, that the rendition of the judgment on its undertaking violated the due process clause of the Fourteenth Amendment. The petition was denied without opinion. The federal claim there made cannot serve as the basis for review by this Court. The contention that a federal right had been violated rests on the action of the trial court in entering

> judgment without giving notice and an opportunity to be heard. The same ground of objection had been raised throughout the proceedings but solely as a matter of state law. There had been ample opportunity earlier to present the objection as one arising under the Fourteenth Amendment."

The above case is cited in *Radio Station WOW v. Johnson*, 326 U. S. 120, 128, where the same rule is followed.

The present case does not come within the exception where the Federal claim arises from the unanticipated disposition of the case at the close of the proceedings in the State Supreme Court. The State Supreme Court decision was not based on any ground which was not fully discussed in the briefs presented in that court. There is no element of "unanticipated disposition" by the state court in this case.

Hulbert v. Chicago, 202 U. S. 275, involved a special assessment proceeding. At the hearing on the confirmation of the assessment roll plaintiff filed written objections including his contention that the proceedings were in violation of the Fourteenth Amendment of the Federal Constitution. This claim, however, was not made in the state court proceedings which followed. The court on page 280 said:

> "We do not think that the plaintiff in error complied with section 709 of the Revised Statutes in setting up a right under the Constitution of the United States. The mere claim in the objections to the confirming of the assessment, never afterwards brought to the attention of the trial court or of the Supreme Court, was not sufficient."

II.

Res Judicata Is Not a Federal Question

The State Supreme Court decided this case solely upon the question of *res judicata*, and held:

(1) That the City of Madison Heights intervened in the *Southfield* and *Troy* cases and was bound by the decrees therein. 361 Mich. 525-6.

(2) That the trial court in the *Southfield* and *Troy* cases approved the formula involved in this case, that appeal might have been taken from that holding but was not; and that the holding of the trial court in those cases was determinative of the issue. 361 Mich. 526.

The decrees in the *Southfield* and *Troy* cases were exactly in accordance with Madison Heights' desires as set forth in its petition to intervene (Appendix 2) in those cases. See comments of state court 361 Mich. 526. Under those circumstances, the city did not and could not claim that those cases involved any element of fraud, collusion or violation of constitutional rights. The state court therefore had before it in the present case the pure unadulterated doctrine of *res judicata*, which is a matter of state law.

The determination of a State Supreme Court is final as to whether a former judgment is or is not *res judicata*.

Union & Planters' Bank v. Memphis, 189 U. S. 71, 75;

Covington v. First National Bank, 198 U. S. 100, 109;

Wright v. Georgia RR & Banking Company, 216 U. S. 420, 429;

Oklahoma Packing Company v. Oklahoma G & E Company, 309 U. S. 4, 8;
Kersh Lake Drainage District v. Johnson, 309 U. S. 485, 489.

Kersh Lake Drainage District v. Johnson, 309 U. S. 485, involved drain bonds. In 1931 and 1932 state court decrees were entered in favor of certain landholders determining that the lien upon their lands had been satisfied by payment in full of their special assessments. Later, pursuant to a Federal Court decree, the drainage district levied a deficiency assessment against the entire district, payment of which was refused by the landowners above mentioned. The drainage district then started proceedings in the state court to enforce the assessments. These landowners pleaded *res judicata* on account of the former state court decrees freeing their lands from further assessment. The State Supreme Court sustained the *res judicata* pleas. On appeal this court said on page 489:

> "As stated by the Supreme Court of Arkansas, the general jurisdiction of the Lincoln Chancery Court, under the state law, to render the 1931 and 1932 decrees is 'acknowledged,' and this determination by the state's highest court is binding upon us."

The state court having decided the case solely upon the question of *res judicata*, there can be no Federal question to be decided by this court upon appeal therefrom.

III.

The Due Process Clause is Not Violated by An Erroneous State Court Decision on a State Matter

Petitioner's position seems to be that it is deprived of due process because the State Supreme Court disagreed with it. An erroneous state court decision upon a matter of state law does not confer jurisdiction upon this court by virtue of the due process clause of the Constitution.

Arrowsmith v. Harmoning, 118 U. S. 194, 195-6;
Iowa Central Railway Company v. State of Iowa, 160 U. S. 389, 393-4;
Standard Oil Co. v. Missouri, 224 U. S. 270, 290;
McDonald v. Oregon R.R. & Navigation Co., 233 U. S. 665, 669-70;
American Railway Express v. Kentucky, 273 U. S. 269, 273.

We therefore respectfully submit that the petition for writ of certiorari should be denied.

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APPENDIX 1

RETURN TO WRIT OF CERTIORARI, ANSWER TO PETITION THEREFOR, AND MOTION TO QUASH

(Filed October 26, 1959)

Now come the Drainage Board for Twelve Towns Relief Drains, and Daniel W. Barry (Chairman), Delos Hamlin and Robert Y. Moore, members of said Board, defendants in the above entitled cause, and for return to the writ of certiorari heretofore issued in this cause herewith file the proceedings taken by said Drainage Board in respect to the Twelve Towns Relief Drains; and for answer to the petition for writ of certiorari heretofore filed in this cause, say as follows:

I.

Defendants admit the allegations contained in paragraph I of said petition.

II.

Defendants admit the allegations contained in paragraph II of said petition.

III.

Defendants admit the allegations contained in paragraph III of said petition except they deny that plaintiff's Exhibit A attached to its petition was anything other than a computation upon which the apportionments of costs were based and is not a part of the official proceedings of the drainage board.

IV.

Defendants admit the allegations contained in paragraph IV of said petition.

V.

Defendants answering paragraph V of said petition admit that the drainage board did on September 30, 1959, by unanimous action, confirm the tentative apportionments made on August 28, 1959, which confirmation was made by resolution duly adopted at said meeting but which did not contain any part of plaintiff's Exhibit A except the last column.

VI.

Defendants admit the allegations contained in paragraph VI of said petition.

VII.

Defendants deny the allegations contained in paragraph VII of said petition.

VIII.

Defendants answering the allegations contained in paragraph VIII of said petition allege that the conditions which make the Twelve Towns Relief Drains necessary have been contributed to by all of the public corporations to be assessed for the cost of said project, including the City of Madison Heights, and that the Twelve Towns Relief Drains will service an area as described in a certain resolution adopted by the Drainage Board on August 20, 1959, which area includes the lands within the drainage districts of the original drains to be relieved by said Twelve Towns Relief Drains, plus certain additional territory specifically requested by certain public corporations. Defendants deny

any allegations in said paragraph VIII which are not herein admitted.

IX.

Defendants answering paragraph IX of said petition deny the allegations contained in said paragraph except to the extent they are hereinafter admitted. They admit that credits were given to each of the municipalities including the City of Madison Heights for contributions made to the county drains to be relieved by the Twelve Towns Relief Drains. They deny that the plaintiff can now raise any question as to matter of such credits for the reasons hereinafter set forth.

X.

Defendants deny the the allegations contained in paragraph X of said petition and deny that distance from the outlet is a proper basis upon which to make an assessment under the circumstances of this case. The defendants allege that plaintiff is one of fourteen public corporations which lies within the Twelve Towns Drainage Area and that each is benefited by the project and contributes to the conditions making necessary the project, in accordance with their respective areas. They allege that that part of the Twelve Town Relief Drains within the City of Madison Heights is part of a complete system for the entire area and that Madison Heights is assessed for its part of the complete system and not for the portion within the city limits.

XI.

Defendants answering paragraph XI of said petition admit that the plaintiff has no other specific remedy except

in certiorari proceedings but denies that it is entitled to any relief herein.

XII.

Defendants deny the allegations contained in paragraph XII of said petition and allege that all proceedings taken by the said Drainage Board have been in accordance with law.

XIII.

Defendants deny that plaintiff is entitled to any of the relief claimed in its petition.

XIV.

Defendants hereby move to quash the said Writ of Certiorari and all proceedings in this cause, for the following reasons:

(1) The proceedings of the Drainage Board for the Twelve Towns Relief Drains shows that the defendants have acted legally in all matters and that the plaintiff is not entitled to any relief.

(2) That plaintiff's cause of action is barred by a prior judgment inasmuch as the matters concerning which plaintiff claims relief are res judicata for the following reasons:

A. That the City of Madison Heights voluntarily intervened as a defendant in the case of Township of Southfield v. Ralph A. Main, et al., acting as the Drainage Board for the Twelve Towns Relief Drains, No. C-28669 in the Circuit Court for the County of Oakland in Chancery, and in the case of City of Troy v. Ralph A. Main, et al., acting as the Drainage Board for the Twelve Towns Relief Drains, No. C-28671 in

the Circuit Court for the County of Oakland in Chancery, which cases were appealed to the Supreme Court of the State of Michigan where an opinion was filed and recorded in Volume 357 of Michigan Reports, page 59.

B. That paragraph 16 of the original Bill of Complaint filed in said Township of Southfield case and paragraph 12 of the supplemental Bill of Complaint filed in said case read as follows:

"16. Plaintiff further shows that the defendants, acting as the Drainage Board, have wrongfully computed credits to be granted to some or all of the affected communities, whereby deductions are made for such communities because of presently existing drains; that defendants purport to be operating under some equitable formula. Plaintiff shows that even if all other acts of the defendants are proper and lawful, the statute under which they purport to act authorizes no such credit, and that until the method of ascertaining the amount to be charged to each municipality is corrected, no final apportionment should be made."

"12. Plaintiff alleges that it correctly appears on the face of the minutes of the Drainage Board for September 25, 1957, that municipalities benefiting from the proposed drainage system have not been charged with the proportion of the total cost arising from the benefits to be received and the contribution made to the drainage problem by said communities respectively. Plaintiff shows that by reason of the improper grant of credits for existing drains there is no way of ascertaining what portion, if any, of the cost to any community arises because of benefits to be received by that community and no way

of ascertaining what contribution said community is deemed to make to the overall drainage problem; plaintiff shows that it would appear by a reasonable inspection of the problem that those areas presently having the most drains should be charged proportionately more than those areas having the least drains inasmuch as the former are obviously the ones contributing most to the problem at hand."

C. That paragraph XI of the original Bill of Complaint filed in said City of Troy case and paragraph VI of the supplemental Bill of Complaint filed in said case, reads as follows:

"XI. That plaintiff has been informed (Exhibit A) that credits to various public corporations to be assessed have been established, totaling $17,100,000.00, approximately, and that said credits are for existing drains built during the last thirty years, and that said existing drains will not become a part of the so-called Twelve Towns Relief Drain System and that said credit was computed at present day estimated replacement value with no depreciation being taken into account and despite the fact, admitted by defendants, that said figure is in excess of three times the original cost thereof; that the records of the defendant Board contain no information substantiating or explaining how said credit was computed; that the drain code of 1956 contains no provision for allowing such credits and that Section 463 of said code (M.S.A. 11.1463) reads in pertinent part as follows: 'County drains * * * may be established * * * where the cost thereof is to be assessed wholly against public corporations.'

And that Section 478 of said code (M.S.A. 11.1478) in pertinent part reads as follows: 'The drainage Board * * *. It shall be responsible for the operation and maintenance of the drain.'

That the plain effect and proper statutory intent of such sections is that the Twelve Town Drain System must either consist, (1) solely of the new relief drain contemplated the whole cost of which, without credits, must be borne by the participating public corporations, or, (2) of the old existing drains plus the new relief drains, the former at some valuation other than present replacement value and made an integral part of the system and maintained by the system.

That this Honorable Court ought to so interpret and declare."

"VI. That in paragraph XI of the plaintiff's original bill of complaint the allegation is contained with respect to the credits which the Twelve Towns Drainage Board for the Twelve Towns Relief Drain proposes to award to the various municipalities and objections are therein made to the allowance of credit; that at the meeting of the Drainage Board for the Twelve Towns Relief Drain held on September 25, 1957, a resolution was made and passed establishing new credits and distributing said credits among the various participating municipalities, which credits total a sum of $17,001,452.85; that Section 480 of the Act defines what items of cost are to be taken into account in establishing, contstructing, and financing said drains and that said Section does not permit the giving of any credits to any municipality on account of any pre-existing drains;

that reference to said Section 480 of the Drainage Code of 1956 is hereby prayed, and this Honorable Court's attention respectfully called to the contents of such paragraph, for the purpose of interpretation and declaration."

D. That the opinion of the Trial Court in said Township of Southfield and City of Troy cases (which were consolidated for trial) contains the following statements:

"The formula used to determine the apportionment of a particular municipality's share in the drainage project was as follows:

Cost of the new drains plus today's value of the old existing drains, multiplied by the percentage of the area in each public corporation within the drainage system, minus the contributions by the particular municipality for the old drains, but which contribution was appreciated in terms of today's values."

(See 357 Michigan, 68, for same statement by the Supreme Court.)

"Question. Was the method used by the Drainage Board in determining its tentative allocation of costs legal?

The Court says 'Yes'.

All the territory in the Twelve Towns Drainage District will be served by the existing drains and the proposed relief drains. Each of the engineers testified that the relief drains were designed so as to supplement the original drains in order to afford equal drainage facilities to all parts of the area for a ten-year frequency storm. Therefore, after the construction of the Twelve Towns relief drains, each

municipality will have equal drainage facilities as far as the county drains are concerned. The drains were designed as an area project and without respect to municipal boundary lines. The necessity and wisdom of solving the drainage problem here involved on an *area level* as opposed to Township or city levels was amply demonstrated.

Exhibit 7 is based upon the theory that to furnish adequate drainage facilities to this area, there must be a system (including the original and the relief drains) with certain capacities, which is represented by the $61,093,452.85 figure in column 3; that the several political subdivisions have already furnished toward that total system, the original drains which are represented by the respective dollar amounts in column 4, totalling $17,001,452.85 (on a 1956 cost basis); and that therefore by subtracting from each public corporation's total requirements, that which it has already furnished, leaves the amount which it should pay for the relief drains. The plaintiffs object to the deductions for the old drains. Let us assume two public corporations with the same service area, where one provided more of the original drains. Would it be in accordance with benefits, if both were assessed the same amount for the relief drains where its need for relief was not as great because of its former larger contributions? Depreciation has no part in the formula. The original drainage districts and not the Twelve Towns area will have to maintain the original drains.

By way of emphasis the following basic facts should be repeated.

1. Credits were granted only for existing county drains which have been paid for, and in some cases are still being paid for, by the citizens of the municipalities in which such county drains are located.

2. The Twelve Towns Drainage System is designed to serve all of the communities within its service area. To do this, both the existing county drains *and* the proposed relief drains are necessary.

From these two basic premises, it must follow that if credits were not given for existing county drains the residents of relatively less developed communities with few existing county drains, such as Troy and Southfield, would receive the benefit of the existing county drains without paying for them, even though the residents of the communities in which such county drains are located have paid and still are paying for them. This being the case, it cannot be said that there has been an abuse of discretion, or that the approach used by the Drainage Board was an unreasonable one. The fact that there may be other possible ways of making the apportionment is immaterial, since the court will not substitute its judgment for that of the members of the Drainage Board.

The Court concludes that the method or formula used by the Board in determining its tentative allocation of cost (Exhibit 7) is both equitable and legal."

E. That the decree entered in the circuit court in the Township of Southfield case contains the following adjudications:

"14. That the tentative apportionment of cost of the Twelve Towns Relief Drains among the several public corporations, as set forth in resolution of the Drainage Board adopted on September 25, 1957, was not an abuse of the discretion lodged in the Drainage Board and that there was nothing illegal in the method used in arriving at such apportionments.

18. That the various proceedings which have been taken in respect to the construction and financing of the Twelve Towns Relief Drains have been in compliance with Chapter 20 of the Drain Code of 1956 and are legal."

That the same adjudications were made in paragraphs 13 and 17 of the Decree in the Circuit Court in the City of Troy case.

F. That the Circuit Court decrees in said Township of Southfield and City of Troy cases insofar as they relate to apportionments, were based upon Exhibit 7 introduced in evidence in those cases, which exhibit was a computation by which the apportionments of cost were arrived at; that Exhibit A attached to plaintiff's petition in this cause is computed upon the same formula as said Exhibit 7; and that the changes in said Exhibit A are the result of the increased estimated cost of the project and changes in the areas assigned to certain public corporations.

G. That the fundamental principles in respect to the apportionments which were confirmed by the defendant Drainage Board on September 30, 1959, were the same as those involved in the apportionments in the litigation in the former cases above referred to.

H. That the City of Madison Heights as intervening defendant in the said two former cases offered no evidence questioning the formula used in arriving at the apportionments involved therein and made no objection to the entry of the respective decrees therein, and that therefore the said City is now barred from raising any issue in this cause affecting its apportionment of the cost of Twelve Towns Relief Drains, which apportionment is percentage-wise less than the former apportionment against it and is dollar-wise larger solely because of the increase estimated cost of the project.

This Motion is based upon the records and files in this cause and in the City of Southfield and City of Troy cases above referred to, and the affidavit of Daniel W. Barry hereto attached.

Drainage Board for the Twelve Towns
Relief Drains,
Daniel W. Barry,
Delos Hamlin,
Robert Y. Moore,
By Daniel W. Barry,
Chairman of said drainage Board.

Norman R. Barnard,
Corporation Counsel,
Charles A. Davis,
Robert P. Allen,
Assistants Corporation Counsel,
Attorneys for Defendants.

By Robert P. Allen,
Claude H. Stevens,
Of Counsel,
800 First National Bank Bldg.,
Detroit 26, Michigan.

State of Michigan,
County of Oakland—ss.

Daniel W. Barry being first duly sworn deposes and says that he is one of the defendants in the above entitled cause, and that he has read the foregoing Answer and Motion to Quash and knows that contents thereof and that the same are true of his own knowledge except as to matters therein stated to be on information and belief and as to such matters he believes the same to be true.

Deponent further says that he has compared quoted statements made in the above Motion to Quash with the official records in the two cases therein referred to and that the same are true and correct excerpts from said official records.

Deponent further says that Exhibit 7 hereto attached is a true and complete copy of Exhibit 7 introduced in evidence at the trial of the Township of Southfield and City of Troy cases referred to in the foregoing Motion to Quash.

Further deponent sayeth not.

Daniel W. Barry.

Subscribed and sworn to before me, a notary public in and for the County of Oakland and State of Michigan, this 26th day of October, A. D., 1959.

Alice Treadwell,
Notary Public, Oakland County, Michigan.
My commission expires: September 25, 1960.

No. 28

EXHIBIT 7

TWELVE TOWNS RELIEF DRAINS

Public Corporation	1. Area in Acres	2. Percent of Area	3. Share of Twelve Towns System	4. Share of Benefits of Former Drains	5. Share of Twelve Towns Relief Drains	6. Approx. Share in Percent 12 Towns
Cities of:						
Berkley	1,595.204	6.745888	4,121,295.91	1,131,236.65	2,990,059.26	6.781410
Birmingham	1,020.488	4.315497	2,636,486.13	632,561.83	2,003,924.30	4.544870
Clawson	1,364.050	5.768371	3,524,097.02	1,125,806.89	2,398,290.13	5.439286
Ferndale	2,382.630	10.075799	6,155,653.51	2,034,739.98	4,120,913.53	9.346171
Hazel Park	626.809	2.650685	1,619,394.99	263,868.31	1,355,526.68	3.074314
Huntington Woods	694.580	2.937279	1,794,485.16	478,898.73	1,315,586.43	2.983730
Madison Heights	1,198.802	5.069561	3,097,169.86	302,429.76	2,794,740.10	6.338429
Oak Park	3,067.896	12.973691	7,926,075.79	2,689,202.24	5,236,873.55	11.877151
Pleasant Ridge	341.761	1.445258	882,958.01	494,548.22	388,409.79	.880908
Royal Oak	7,266.118	30.727368	18,772,410.08	5,230,998.28	13,541,411.80	30.711720
Southfield C. or T. (*)	1,948.714	8.240831	5,034,608.20	738,714.29	4,295,893.91	9.743024
Troy	546.664	2.311763	1,412,335.84	165,191.21	1,247,144.63	2.828506
Townships of:						
Royal Oak	424.408	1.794760	1,096,480.85	704,487.58	391,993.27	.889035
Troy	15.774	.066706	40,753.00	2,920.12	37,832.88	.085804
Co. of Oakland—assumed by County a/c Zoo and Golf Course	246.730	1.043386	637,440.53	162,451.62	474,988.91	1.077268
Co. of Oakland—a/c Highways	465.001	1.966422	1,201,355.10	457,907.66	743,447	1.686128
State of Mich.—a/c Highways	441.428	1.866735	1,140,452.87	385,489.48	754,963.39	1.712246
Totals	23,647.057	100.000000	61,093,452.85	17,001,452.85	44,092,000.00	100.000000

Dated: September 23, 1957

Computed by Ashton J. Berst
Checked by Charles H. Harmon

(*) Southfield divided as follows if

APPENDIX 2

PETITION FOR LEAVE TO INTERVENE AS PARTY DEFENDANT

(Filed in Troy Case November 21, 1956)

In Re City of Troy, Plaintiff vs. The Drainage Board for the Twelve Towns Relief Drains, Defendants.

Now comes the City of Madison Heights, a Municipal Corporation of the State of Michigan, and respectfully shows unto this Honorable Court as follows:

1. That it is a Michigan Municipal Corporation, located in the County of Oakland and State of Michigan.

2. That it is interested in the issues involved in this suit in the manner hereinafter set forth.

3. That it is a member of the drainage system known as the Twelve Towns Relief Drains, and it is a matter of vital interest to petitioner that said drainage system be constructed with all possible speed.

4. That the health, welfare and safety of the citizens of the City of Madison Heights have been repeatedly threatened and endangered by flood conditions existing at times of heavy rainfalls; that said flood conditions are due to the inadequacy of the existing drains within said drainage district; that your petitioner believes and alleges on information and belief, that the creation of the Drainage Board for the Twelve Towns Relief Drains, and the subsequent construction of the proposed relief drains, will alleviate said flood conditions.

5. That this suit threatens to prevent or hinder and delay the construction of the said relief drains.

6. That under the preliminary apportionment of costs of the Twelve Towns Relief Drains, your petitioner would bear a large portion of the costs of construction of said relief drains.

7. That petitioner desires to intervene in said cause as a party defendant therein in order that it may assert its rights in said suit and hereby consents that said intervention shall be in subordination to and in recognition of the propriety of the main proceedings.

Petitioner therefore prays that on the hearing of this Petition, it be granted the following relief:

(a) That an Order be made granting leave to petitioner to intervene in said cause upon such terms as shall be prescribed by the Court.

(b) That petitioner may have such other and further relief as the nature of its case may require.

City of Madison Heights, a
Municipal Corporation,
By Harry H. Young,
City Attorney.

Dated: November 20, 1956.
(Verification)